STATE OF NEW YORK
SUPREME COURT : COUNTY OF JEFFERSON

THOUSAND ISLANDS LAND TRUST, INC.,

Plaintiff,

-against- Index No.:

RON CLAPP and CARLETON VILLA, LLC,

Defendants.

VERIFIED COMPLAINT

Plaintiff, THOUSAND ISLANDS LAND TRUST, INC. ("TILT"), by and through its attorneys, Rupp Pfalzgraf LLC, as and for its Complaint against Defendants, RON CLAPP and CARLETON VILLA, LLC ("Defendants"), alleges as follows:

PARTIES

1. At all times relevant to this action, TILT is and has been a not-for-profit corporation with a principal place of business in Jefferson County in the Town of Clayton, New York. TILT is a not-for-profit conservation organization as that term is defined under section 49-0303 of the N.Y. Environmental Conservation Law (the "ECL") because it is organized to conserve and preserve real property and has the power to acquire interests in real property.

2. At all times relevant to this action, Defendant Carleton Villa, LLC ("Carleton Villa") is and has been a domestic limited liability company duly authorized to do business in the State of New York.

3. At all times relevant to this action, Defendant Ron Clapp is and has been a resident of the State of Florida.

JURISDICTION AND VENUE

4. Under N.Y. CPLR § 301 and Article 49, Title 3 of the ECL, this Court has jurisdiction over this action because it concerns rights and interests in real property and a conservation easement located within the State.

5. Under N.Y. CPLR §§ 301 and 302, this Court has jurisdiction over the parties because Defendants are domiciliaries of New York State and/or own or have an interest in real property situated within the State, as well as because Defendants committed acts giving rise to this action in this State.

6. Under N.Y. CPLR §§ 503 and 507, venue in the County of Jefferson is proper because the wrongful acts described herein occurred in this county and because this action concerns real property that is located within this county.

FACTUAL BACKGROUND

7. At all times relevant to this action, Defendant Carleton Villa is and has been the owner of the parcel of real property located on Carleton Island in the Town of Cape Vincent, New York and designated with Tax Map No. 39.27-1-16 (the "Villa Property").

8. At all times relevant to this action, Defendant Ron Clapp is and has been a member and/or principal of Defendant Carleton Villa.

9. At all times relevant to this action, TILT is and has been the grantee of a conservation easement (the "Conservation Easement" or the "Easement") encumbering real property on Carleton Island (the "Conservation Property"). A copy of the deed creating the Conservation Easement — entitled "Deed of Conservation Easement in Gross Carleton Island Shoreline Buffer Zone" — is attached hereto as **Exhibit A**.

10. At all times relevant to this action, TILT is and was the owner of real property located on Carleton Island in the Town of Cape Vincent, New York and designated with Tax Map Nos. 28.00-1-1.127 and 28.00-1-1.125 (the "TILT Property").

11. The Conservation Property includes the entirety of the Villa Property and the TILT Property.

12. TILT also owns the parcel adjoining the Villa Property and the TILT Property designated with Tax Map No. 39.27-1-14 and known as the "Fort Haldimand Preserve." This is separate and apart from the TILT Property identified in paragraph 10 above.

13. The Conservation Property, including the Villa Property and the TILT Property, are also subject to restrictive covenants set forth in an instrument titled "Declaration of Restrictions of Carleton Island" (the "Declaration "), a copy of which is attached hereto as **Exhibit B**.

14. In August of 1986, Patten Corporation Northeast, a prior owner of the Conservation Property, created both the Conservation Easement and the Declaration.

15. The land encumbered by the Conservation Easement and the Declaration — i.e., the Conservation Property — is defined in both instruments in accordance with the Map of Carleton Island made by Rhinevault Surveyors dated June 2, 1986 and recorded in the Jefferson County Clerk's Office on July 9, 1986 (the "Carleton Island Map"). A copy of said map is attached hereto as **Exhibit C**. The Conservation Property consists of Lots 1 through 20 on the Carleton Island Map. The Villa Property is shown as Lot 1 on said map.

A. The Conservation Easement

16. This action is commenced in part to enforce the Conservation Easement (it is also commenced to enforce the Declaration, discussed in Section B below). The Conservation Easement was recorded on September 5, 1986, in the Jefferson County Clerk's Office at Book No. 1037 of Deeds at Page 296.

17. The Conservation Easement is a conservation easement as that term is defined under section 49-0303 of the ECL because it limits development, management, or use of the Conservation Property for the purpose of preserving or maintaining the scenic, open, and natural condition of Carleton Island in a manner that is consistent with the public policy and purposes set forth in section 49-0301 of the ECL.

18. The Conservation Easement establishes that "portions of the [Conservation Property] remain in a substantially undisturbed natural state and have significant[] woodland, wildlife, and aesthetic values."

19. Moreover, the Conservation Easement states that the grantor, Patten Corporation Northeast, "desires to identify and to assure the preservation in perpetuity of the property's significant natural elements, and to maintain its vegetative cover."

20. Accordingly, the agreed-upon purpose of the Conservation Easement is to "preserve and protect in perpetuity the scenic, aesthetic, natural, woodland, wildlife habitat, wetland, watershed, successional vegetative features, and open space features and value of the [Conservation Property]."

21. In order to implement the agreed-upon conservation purpose, Patten Corporation Northeast agreed on limitations on the use of the Conservation Property. Among other limitations, Section 3 of the Easement prohibits the following uses and practices on the Conservation Property:

> (a) The construction or placement of any structures, permanent or temporary, with the exception of duck blinds, docks, and boathouses.
>
> (b) The cutting of more than 50% of the natural vegetation. Within any 300' frontage there must be one contiguous strip of at least 100' parallel and perpendicular to the shore retained in natural vegetative condition. Except those lots of less than 200' frontage must retain a contiguous 50% of-said frontage in natural vegetative cover but said natural vegetative strip may be less than 100' in frontage.
>
> (c) Temporary, seasonal or permanent occupancy of the shoreline buffer zone for residential purposes shall be prohibited.

22. To give force and effect to the Conservation Easement, Patten Corporation Northeast conveyed to the grantee of the Conservation Easement several affirmative rights. Specifically, Section 2 of the Easement empowers TILT with the following rights:

> (a) To identify, to preserve and to protect in perpetuity the natural, wildlife, wetland, open space, aesthetic, scenic, successive vegetative, and woodland features and values of the property,
>
> (b) To enter upon the property to inspect and to enforce the rights herein granted upon prior notice to grantor, their successors and assigns, in a manner that will not unreasonably interfere with the proper uses being made of the property at the time of such entry,
>
> (c) The right to enforce the terms hereof by proceeding at law or in equity or as otherwise may be appropriate and to require the grantor, at the grantor's expense, to cease non-conforming uses and restore the [Conservation Property] to the conditions that exist on the date of this grant.

23. Further, Sections 5 and 6 of the Easement provide TILT enforcement rights as follows:

> **5. Enforcement Rights of Grantee.** In the event of a violation of any term, condition, covenant, or restriction contained in this easement, after thirty (30) days notice of violation to the grantor, the grantee may institute a suit to enjoin by temporary and/or permanent injunction such violation, or for damages for breach of covenant, or may take such other action as it deems necessary to insure compliance with the terms, conditions, covenants, and purposes of this easement: provided, however, that any failure to so act by the grantee shall not be deemed to be a waiver or a forfeiture of the right to enforce any term, condition, covenant, or purpose of this easement in the future.
>
> **6. Restoration.** Grantor further intends that should any prohibited activity be undertaken on the property, the grantee, except in the case of emergencies requiring immediate action, shall after 30 days of written notification of such violation have the right to cause the restoration of that portion of the property affected by such activity to the condition that existed prior to the undertaking of such prohibited activity. In such case, the cost of such restoration shall be borne by grantor, its successors or assigns.

B. The Declaration

24. This action is commenced in part to enforce the Declaration. The Declaration was recorded on September 11, 1986, in the Jefferson County Clerk's Office at Book No. of 1038 Deeds at Page 211.

25. For the purpose of providing uniform restrictive covenants for the Conservation Property and to protect scenic and other conservation values, Patten Corporation Northeast, the owner of the Conservation Property at the time of conveyance of the Declaration, created restrictive covenants. Among other restrictions, the Declaration provides as follows:

> 4. The placement of trailers, mobile homes, or motor homes on the [Conservation Property] at any time for any reason is prohibited.
> . . .
> 7. The dumping of ashes, trash, garbage and other unsightly material is prohibited.
> . . .
> 9. Construction of all structures within the 100' shoreline buffer area as shown on [the Carleton Island Map], with the exception of duckblinds, docks and boathouses, is prohibited.
> . . .

> 15. There shall be no commercial . . . excavation on any lot at any time.
> . . .
> 16. There shall be no grading of land surface, excavation, or exhumation activity on any portion of Lots 1, 2, and 20 located within the Fort Haldimand Buffer Zone, i.e. within "limits of nominated lands" as shown on the [Carleton Island Map] without a minimum 30 day notice to [TILT]. All parties may be relieved from the responsibility of this notice requirement upon written approval by the New York State Historic Preservation Officer and a representative of the New York State Museum.

26. The purpose of the Declaration is and was to benefit the Conservation Property, then held by Patten Corporation Northeast, and to provide for the orderly and uniform development of such property. Therefore, TILT is entitled to enforce the Declaration as the owner of the TILT Property.

27. Further, the circumstances of the Declaration demonstrate that Patten Corporation Northeast intended that the grantee of the Conservation Easement be entitled to enforce the Declaration. Therefore, TILT also is entitled to enforce the Declaration as the grantee of the Conservation Easement.

C. Violations in Defendants' Development Plan

28. On or about October 4, 2023, Defendants submitted to the Town of Cape Vincent a Special Use Permit Application seeking regulatory approval for a plan of development for the Villa Property (the "Development Plan"). A copy of said application is attached hereto as **Exhibit D**.

29. Defendants have submitted updated "Site Plans" to the Town of Cape Vincent as part of the permit application process. The most recent Site Plan submitted by Defendants is attached hereto as **Exhibit E** (the "Site Plan").

30. The Development Plan, as depicted by the Site Plan, will violate both the Conservation Easement and the Declaration. Violations apparent from the Site Plan include, but are not limited to, the following:

31. The following structures depicted in the Site Plan would violate the prohibition on "structures" within Section 3(a) of the Conservation Easement:

- The "Beach Expansion";
- Other structures associated with the beach, including structures mandated by the New York State Department of Health for bathing beaches;
- The "Floating Platform";
- Suspected utility line(s) shown as a dotted line labeled "E";
- The "Stone Retaining Wall";
- The "mulch/gravel" path(s);
- The "Cobblestone paved" path(s); and
- The "Community Garden".

32. The Site Plan depicts the removal of a large number of trees and/or other vegetation from the Villa Property, which would violate the limits on cutting natural vegetation in Section 3(b) of the Conservation Easement.

33. The 12 "cabins" depicted on the Site Plan would violate the prohibition of "trailers, mobile homes, or motor homes" within Section 4 of the Declaration.

34. The construction necessary to effectuate the Development Plan as depicted in the Site Plan would violate the prohibition on dumping of ashes, trash, garbage or unsightly material within Section 7 of the Declaration.

35. The construction necessary to effectuate the Development Plan as depicted in the Site Plan would violate the prohibition on commercial excavation under Section 15 of the Declaration given that the excavation would be for the purposes of facilitating the commercial use of the Villa Property.

D. Violations by Defendants' Development Efforts

36. By letter dated March 1, 2024, counsel for TILT advised Defendants that the Development Plan would violate the Conservation Easement and the Declaration, and demanded that Defendants cease and desist from all efforts to proceed with the Development Plan.

37. By letter dated March 20, 2024, counsel for Defendants advised TILT that they believed that the Development Plan would not violate either the Conservation Easement or the Declaration.

38. On April 9, 2024, representatives of TILT visited the Fort Haldimand Preserve adjacent to the Villa Property and observed heavy earth-moving and/or vegetation removal equipment in use on the Villa Property (Defendants' "Development Efforts"). They observed representatives of Defendants cut down or destroy a significant amount of vegetation on the Villa Property.

39. Prior to April 9, 2024, TILT was not aware of any efforts by Defendants to begin work on the Development Plan.

40. Defendants did not provide TILT with 30 days' notice of such activity as required by Section 16 of the Declaration.

41. Upon information and belief, Defendants did not obtain written approval for such activity from the New York State Historic Preservation Officer or a representative of the New York State Museum.

42. Upon information and belief, Defendants' Development Efforts on the Villa Property have violated the Conservation Easement and the Declaration in other ways. Because TILT has not had the opportunity to ascertain Defendants' activities on the Villa Property specifically, Defendants' violations cannot be alleged specifically as of the date of this Complaint. However, upon information and belief, Defendants' Development Efforts have violated the limits on cutting natural vegetation in Section 3(b) of the Conservation Easement.

FIRST CAUSE OF ACTION
(Declaratory Judgment and Permanent Injunction)

43. TILT repeats, reiterates, and re-alleges each and every allegation that is set forth in paragraphs "l" through "42" of this Complaint with the same force and effect as though fully set forth at length herein.

44. As stated above, the Development Plan would violate the restrictions of the Conservation Easement and the Declaration.

45. Further, as stated above, Defendants' Development efforts already have violated the restrictions of the Conservation Easement and the Declaration.

46. TILT is entitled to enforce said restrictions.

47. Moreover, the Development Plan and Defendants' Development Efforts pose a threat to the natural, wildlife, wetland, open space, aesthetic, scenic, successive vegetative, and woodland features and values of the Villa Property.

48. Therefore, pursuant to Section 2 of the Conservation Easement, TILT is entitled to commence a proceeding to preserve and protect said features and values, including for a judgment ceasing the Development Plan and Defendants' Development Efforts.

49. Defendants' Development Efforts demonstrate an intent to carry out the Development Plan regardless of violations of the Conservation Easement or the Declaration.

50. TILT has no adequate remedy at law.

51. Based on the foregoing, TILT is entitled to a declaratory judgment that Defendants' Development Plan would violate the Conservation Easement and the Declaration.

52. Additionally, based on the foregoing, TILT is entitled to a permanent injunction enjoining Defendants from taking any steps on the Villa Property to carry out the Development Plan.

SECOND CAUSE OF ACTION
(Violations of the Conservation Easement and Declaration)

53. TILT repeats, reiterates, and re-alleges each and every allegation that is set forth in paragraphs "l" through "52" of this Complaint with the same force and effect as though fully set forth at length herein.

54. Upon information and belief, Defendants' Development Efforts already have violated the Conservation Easement and/or Declaration.

55. Pursuant to the Conservation Easement, if there have been any violations and they have not been cured within thirty days' notice thereof, TILT is entitled to enforce the Conservation Easement in law or equity. As discussed above, TILT provided notice to

Defendants on March 1, 2024 that the Development Plan would violate the Conservation Easement, but Defendants carried on with Defendants' Development Efforts anyway.

56. Moreover, Defendants' violations contravene the purpose of the Conservation Easement and are detrimental to the scenic, aesthetic, natural, woodland, wildlife habitat, wetland, watershed, successional vegetative features, and open space features and value of the Villa Property.

57. Based on the foregoing, TILT is entitled to a judgment for a monetary amount that is sufficient to cure the violations of the Conservation Easement and the Declaration, to restore the Villa Property as closely as possible to its condition prior to those violations, and to otherwise mitigate and/or cure any damage to the Villa Property. Also, in this respect, TILT is entitled to a declaratory judgment that pursuant to sections 2(c), 5, and 6 of the Conservation Easement, TILT has all rights necessary to undertake and/or procure all reasonable efforts to cure the violations of the Conservation Easement, including, but not limited to, the right to enter onto the Villa Property and/or having contractors to do so for the purposes of undertaking such efforts.

58. In the alternative to the relief demanded in the previous paragraph and to the extent that TILT is deemed not to have an adequate remedy at law, TILT is entitled to an injunction compelling Defendants to cure Defendants' violations of the Conservation Easement and the Declaration by restoring the Property to its condition prior to the violations, and otherwise mitigating and/or curing any damage to the Property resulting therefrom.

59. Lastly, based on the foregoing, TILT is entitled to a judgment for a monetary amount that is sufficient to compensate it for the lost conservation value of the

Conservation Property that is a direct and proximate result of Defendants' violations of the Conservation Easement and the Declaration.

THIRD CAUSE OF ACTION
(For Attorneys' Fees and Costs)

60. TILT repeats, reiterates, and re-alleges each and every allegation that is set forth in paragraphs "l" through "59" of this Complaint with the same force and effect as though fully set forth at length herein.

61. The Conservation Easement provides that Defendants are required to pay for all expenses necessary to enforce the terms of the Conservation Easement, to cease non-conforming uses, and to restore the Villa Property to the condition in which it existed prior to such uses. Accordingly, TILT is entitled to recover from Defendants all attorneys' fees and disbursements incurred by TILT as a result of any violation of the Conservation Easement and/or any enforcement action by TILT.

62. As discussed above, upon information and belief, Defendants' Development Efforts have violated the Conservation Easement.

63. Accordingly, TILT is entitled to a judgment for a monetary amount that is sufficient to reimburse TILT for any and all reasonable expenses, including, but not limited to, attorneys' fees, that have been and that will be incurred in connection with this action and that have been and that will be otherwise incurred to enforce the Conservation Easement and/or to address and/or to cure Defendants' violations of the Conservation Easement.

WHEREFORE, TILT demands a judgment against Defendants as follows:

a. For a declaratory judgment that the Development Plan would violate the Conservation Easement and/or the Declaration;

b. For an injunction enjoining Defendants from taking any steps to carry out Defendants' Development Plan;

c. For a monetary amount that is sufficient to cure the violations of the Conservation Easement and the Declaration, to restore the Property as closely as possible to its condition prior to those violations, and to otherwise mitigate and/or cure any damage to the Villa Property;

d. For an injunction compelling Defendants to cure Defendants' violations of the Conservation Easement and the Declaration by restoring the Villa Property to its condition prior to the violations, and otherwise mitigating and/or curing any damage to the Villa Property resulting therefrom;

e. For a monetary amount that is sufficient to compensate TILT for the lost conservation value of the Villa Property that is a direct and proximate result of Defendants' violations of the Conservation Easement and the Declaration;

f. For a monetary amount that is sufficient to reimburse TILT for reasonable expenses, including attorneys' fees, that have been and that will be incurred in connection with this action and that have been and that will be otherwise incurred to address and to cure Defendants' violations of the Conservation Easement; and/or

{The remainder of this page has been intentionally left blank.}

g. Such additional and further relief that the Court and/or jury deems just and proper.

Dated: April 10, 2024
Saratoga Springs, NY

RUPP PFALZGRAF LLC
Attorneys for Plaintiff

By: _____

Phillip A. Oswald, Esq.
227 Washington Street, Suite 1C
Saratoga Springs, New York 12866
Tel: (518) 886-1902
oswald@rupppfalzgraf.com

TO: CARLETON VILLA, LLC
c/o Registered Agent Solutions, Inc.
99 Washington Avenue, Suite 1008
Albany, NY 12210

RON CLAPP
711 N. Broadway
Lantana, FL 33462

Verification

STATE OF NEW YORK)
) ss.:
COUNTY OF Jefferson)

I, Spencer Busler, being duly sworn, state:

I am the Assistant Director and Director of Land Conservation for the Plaintiff, Thousand Islands Land Trust, Inc., and I hereby state that I have read the foregoing Verified Complaint and know the contents thereof; and that the same are true to my own knowledge, except as to the matters therein alleged on information and belief and as to those matters I believe it to be true. The grounds of my belief as to all matters in the Verified Complaint not stated upon my own knowledge are investigations which I have caused to be made concerning the subject matter of this Verified Complaint and information that I have acquired in the course of my duties as a representative of Thousand Islands Land Trust, Inc. and from books and papers of the same.

Spencer Busler

Sworn to before me this
10th day of April, 2024

Notary Public

JORDAN M. SANFORD
Notary Public, State of New York
No. 01SA6422138
Qualified in Jefferson County
Commission Expires Sept. 13, 2025